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Paper No. 17

MEDTRONIC, INC.  
710 MEDTRONIC PARKWAY NE  
MS-LC340  
MINNEAPOLIS MN 55432-5604

**COPY MAILED**

**MAR 04 2004**

In re Application of : **OFFICE OF PETITIONS**  
Lee et al. :  
Application No. 09/740,080 : **ON PETITION**  
Filed: 18 December, 2000 :  
Attorney Docket No. P-8788 :

This is a decision on the petition under 37 CFR 1.137(b),<sup>1</sup> filed by facsimile on 1 December, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

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<sup>1</sup>Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

This application became abandoned on 1 April, 2003, for failure to properly respond to the final Office action mailed on 1 October, 2002, which set a three (3) month shortened statutory period for reply. An amendment after final rejection was submitted on 25 November, 2002, and again on 14 March, 2003, with an extension of time. However, neither amendment placed the case in *prima facie* condition for allowance. Notice of Abandonment was mailed on 23 July, 2003.

The petition lacks the required reply. The only proper reply to a final Office action is an amendment placing the application in *prima facie* condition for allowance, a Notice of Appeal accompanied by the requisite fee, a request for continued examination (RCE) accompanied by a proper submission under 37 CFR 1.114, or a continuing application. No reply appears to have been filed with the present petition. The examiner has determined that the amendment filed on 14 March, 2003, does not place the case in *prima facie* condition for allowance. Petitioner must submit a proper reply to the final Office action mailed on 1 October, 2002, with any renewed petition.

Additionally, the petition lacks a proper statement of unintentional delay. A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional is required. It is recommended that petitioners use the enclosed petition form PTOL/SB/64, which contains the proper statement of unintentional delay.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX:           (703) 872-9306  
                  Attn: Office of Petitions

By hand:           U.S. Patent and Trademark Office  
                  2011 South Clark Place  
                  Customer Window  
                  Crystal Plaza 2, Lobby, Room 1B03  
                  Arlington, VA 22202

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The petition fee of \$1,330.00 has been charged to counsel's deposit account, No. 13-2546, as authorized in the present petition.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Encl: PTOL/SB/64  
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